

1 MR. HOWARD: -- that we had the calendars but didn't  
2 have certain ones from Ms. Covington.

3 JUDGE SIPPEL: I, I think it's best to leave this  
4 and we'll come back to it tomorrow and you will have a chance  
5 to --

6 MS. SCHMELTZER: Okay. Maybe we could --

7 JUDGE SIPPEL: -- to -- this through much more  
8 carefully.

9 MS. SCHMELTZER: -- stipulate to that.

10 JUDGE SIPPEL: Well, it shouldn't have to be  
11 stipulated to. This should be -- I know that, that counsel  
12 exchanged a certain amount of correspondence anyway when you  
13 were in the discovery phase and it may have showed up in one  
14 of the letters, one of the cover letters. I, I don't have a  
15 direct recollection as to when it first came to my attention,  
16 so I don't want to, I don't want to factually confuse matters  
17 by suggesting anything. Let's get this cleared up tomorrow  
18 morning and, and move into another area.

19 It's, it's 3:00. We'll recess until 3:15 and we can  
20 go a little bit past 4:00 today if, if, if it's okay with you.

21 THE WITNESS: Sure.

22 JUDGE SIPPEL: All right, we're in recess until  
23 3:15.

24 (Whereupon, at 3:02 p.m., a brief recess was taken,  
25 until 3:13 p.m.)

1 JUDGE SIPPEL: We're back on the record.

2 MS. SCHMELTZER: Your Honor, let's see, I think I  
3 have an exhibit or two to move into evidence.

4 JUDGE SIPPEL: Well, if you do --

5 MS. SCHMELTZER: They're -- Not 5, but --

6 JUDGE SIPPEL: These would be the ones that were --  
7 the documents that were recently exchanged with you having to  
8 do with the context of NBC?

9 MS. SCHMELTZER: We have 12, Four Jacks Exhibit 12  
10 which is the Barr calendar.

11 JUDGE SIPPEL: Yes, that will -- Oh. You want that  
12 moved into evidence at this time?

13 MS. SCHMELTZER: Yes.

14 JUDGE SIPPEL: All right. Any objection to the Barr  
15 calendar coming in?

16 MR. ZAUNER: Yes, Your Honor. What, what's the  
17 purpose for receiving the Barr calendar?

18 MS. SCHMELTZER: Well, it's going to be related to  
19 further testimony. I can, I can hold off and, you know, move  
20 it in after, after that testimony. But, but, but what it  
21 relates to is that is the only evidence of leader interviews,  
22 her notations on her calendar.

23 MR. ZAUNER: Oh, I thought we already had --

24 MS. SCHMELTZER: That was, that was contemporaneous  
25 with the license term.

1 MR. ZAUNER: But it seemed to me -- And I haven't  
2 examined it. I'm just really looking at this for the first  
3 time, but, Your Honor, it's duplicative of what is already  
4 stated in Emily's testimony --

5 MS. SCHMELTZER: It's not duplicative.

6 MR. ZAUNER: -- in that it -- Well, it doesn't  
7 contradict it. What is the purpose for having this extra  
8 paper in the record?

9 JUDGE SIPPEL: Well, I, I don't have to make a  
10 determination right now, today, as to what this -- what  
11 contradiction there might be. It could just be that the  
12 absence of information in the document in its entirety would  
13 be used for findings, but you're shaking your head. I  
14 shouldn't use that for finding? What, what, what are you  
15 suggesting?

16 MR. ZAUNER: Well, if that's the case, that would be  
17 a valid purpose if --

18 MS. SCHMELTZER: That, that is one of the purposes.

19 MR. ZAUNER: But that wasn't the purpose I heard  
20 expressed by Ms. Schmeltzer.

21 JUDGE SIPPEL: Well --

22 MR. ZAUNER: And maybe it exists and maybe it  
23 doesn't, I don't know. I accept what you're saying, Your  
24 Honor.

25 JUDGE SIPPEL: Yeah, it's, it is -- it certainly is

1 relevant and certainly it is not, it is not cumbersome and it  
2 would go marked as a -- it would go with the record as a  
3 rejected exhibit even if we rejected it. So we'll -- Is  
4 there -- I'm sorry, is there an objection from Scripps Howard?

5 MR. HOWARD: Only, Your Honor, that we -- that's why  
6 we introduced the summary of the calendar, but there is  
7 additional information in the, in the exhibit that's not in  
8 the calendars.

9 JUDGE SIPPEL: All right. Well, you know, we  
10 understand why this is being done. I'm going to receive it  
11 into evidence, your motion is granted. That's Exhibit 12.  
12 That's received in evidence at this time.

13 (Whereupon, the document referred to  
14 as Four Jacks Exhibit 12 was received  
15 into evidence.)

16 JUDGE SIPPEL: Now, your Exhibit 5 stays out for the  
17 time being. Your next one would be Number 13 then.

18 MS. SCHMELTZER: Yes. I'd like to have marked as  
19 Four Jacks Exhibit 13 a one-page document. It's entitled  
20 "Exhibit 2." It was provided to us in document production and  
21 it's the documents for which Scripps Howard Broadcasting  
22 asserts the attorney/client privilege.

23 JUDGE SIPPEL: They assert the privilege, did you  
24 say?

25 MS. SCHMELTZER: With respect to two documents only.

1 JUDGE SIPPEL: Well, what is the, what is the  
2 purpose of even considering this? This is just -- I don't  
3 understand that.

4 MS. SCHMELTZER: Well, the purpose is that the 1992  
5 compilation is not set forth in here for purposes of claiming  
6 the attorney/client privilege.

7 JUDGE SIPPEL: You mean you don't have the -- Let me  
8 ask you to rephrase that a little bit. This is -- Well, I --

9 MS. SCHMELTZER: These are the only documents for  
10 which they claim work product privilege.

11 JUDGE SIPPEL: Well, what's the relevance of that to  
12 anything? You say they claim the privilege to what?

13 MS. SCHMELTZER: Because the 1992 compilation was  
14 not claimed as work product.

15 JUDGE SIPPEL: What, what inference would you ask to  
16 be drawn from this fact, that they've asserted the attorney  
17 work product privilege with respect to this information?

18 MS. SCHMELTZER: It's our contention that that 1992  
19 compilation of programming should have been claimed. I'll be  
20 happy to put our motion for production of documents into  
21 evidence, but we believe it was covered by that motion. We  
22 also asked in our motion for production of documents that if  
23 anything was destroyed that that be set forth. Now, you know,  
24 I know it's a pleading, but if you want me to put the motion  
25 for production of documents in the record, I can do so.

1 JUDGE SIPPEL: Well, no. I, I will -- We'll have  
2 this, we'll have this marked as an exhibit. I'm just -- I'm  
3 hesitating about it. I'm still trying to focus on its -- on,  
4 on what it is that you're, you're looking for in terms of a  
5 finding with respect to this document. This'll be marked for  
6 identification as Four J Exhibit, Exhibit 12.

7 MS. SCHMELTZER: Thirteen.

8 JUDGE SIPPEL: I'm sorry, 13. Thank you.

9 (Whereupon, the document referred to  
10 as Four Jacks Exhibit No. 13 was  
11 marked for identification.)

12 JUDGE SIPPEL: And it's identified now and it's,  
13 it's a one-page document and it's got just a few lines on it,  
14 and it states that "Scripps Howard Broadcasting Company  
15 asserts the attorney/client privilege with respect to the  
16 following documents," and it lists two documents, the author  
17 being Baker and Hostetler and Mr. Zeifang who, who is a  
18 partner at Baker and Hostetler, correct?

19 MR. HOWARD: Yes.

20 JUDGE SIPPEL: Now, where, where do you go with this  
21 thing?

22 MS. SCHMELTZER: Scripps Howard had a compilation  
23 that they put together in 1992 that was -- for which they're  
24 now claiming work product and it was not disclosed in response  
25 to document production.

1 MR. HOWARD: Because, because it was outside the  
2 scope of the document production request and the judge's order  
3 in response to that.

4 MS. SCHMELTZER: Well, then I'll be happy to put all  
5 those things in the record.

6 MR. HOWARD: For example, the notes. Would counsel  
7 expect that every time that we did -- I wrote notes on a, a  
8 document that I should come to the, to the, to the presiding  
9 judge and ask that these notes be excluded as work product?

10 MS. SCHMELTZER: The document production request  
11 specifically requested compilations of programming.

12 MR. HOWARD: And the judge's order said --

13 MS. SCHMELTZER: The document product request asks  
14 for "All documents relating to the preparation of the above  
15 issues programs lists, including documents describing the  
16 conduct and results of ascertainment efforts, general public  
17 surveys, if any, and documents reflecting the compilation of  
18 responsive programming lists." It's our contention that what  
19 they did in '92 fell within that category.

20 MR. HOWARD: Didn't the first part of that request,  
21 it had to do with the preparation of the issues programs list,  
22 that and then the rest of that was including? It certainly  
23 had nothing to do with the preparation of the issues programs  
24 list which was produced contemporaneous with the -- She's --  
25 Her, her -- She's proposing a, a theory for our describing

1 documents that would have been incredibly burdensome and is  
2 unknown to me as a, as a standard for identifying documents.

3 JUDGE SIPPEL: Well, I, I don't --

4 MR. HOWARD: In exhibit preparation. Every draft of  
5 an exhibit that we prepare we have to -- we were supposed to  
6 present?

7 MR. ZAUNER: I think we have one person speaking for  
8 each party in this proceeding and that that should be  
9 continued.

10 JUDGE SIPPEL: Well, I -- This is -- I'm, I'm still  
11 trying to figure out what it is that's -- I don't know what  
12 you want to do with it if you get this document into the  
13 record. They're claiming attorney/client privilege with  
14 respect to this information. And, and you're -- What are you  
15 looking for? Do you want me to do it in camera or something  
16 to see if it applies? The, the -- There seems to be a facial  
17 basis for asserting the privilege. There's no cause of --  
18 There hasn't been an unusual showing as there, as there was  
19 with the, the format information we've just been through.  
20 What, what is it that you want to --

21 MS. SCHMELTZER: No, no. We're talking about, we're  
22 talking about the material that is included in Attachment E  
23 and we're talking about the earlier draft of that.

24 MR. HOWARD: The document that the judge has ordered  
25 us to produce --



1 MS. SCHMELTZER: Right.

2 MR. HOWARD: -- to you this afternoon?

3 MS. SCHMELTZER: Right. We're talking about why the  
4 document that you've now ordered to be produced --

5 JUDGE SIPPEL: Only as to Covington.

6 MS. SCHMELTZER: As to Covington, why that document  
7 wasn't disclosed, because they're now claiming attorney work  
8 product there. We're, we're asking why that wasn't disclosed  
9 in response to discovery. It was done in 1992.

10 JUDGE SIPPEL: Oh, you're saying that they should  
11 have disclosed it as to discovery and then should have  
12 excluded it from the production by identifying it as work  
13 product?

14 MS. SCHMELTZER: That's right.

15 JUDGE SIPPEL: Well, I'm, I'm not going to get into  
16 a side issue in terms of, of the sufficiency of disclosure of  
17 documents at this time. And you've got a -- you had a  
18 specific reason to inquire and you did that at some great  
19 length, but I, I, I'm not prepared to go into this any  
20 further, unless you're going to give me a showing of cause.  
21 You're not -- I'm not going to just turn over -- required to  
22 turn over work product information.

23 MS. SCHMELTZER: But they didn't even identify -- We  
24 didn't even know this existed until exhibits were exchanged.

25 JUDGE SIPPEL: Well, if you want to file a -- What

1 relief is it that you're ultimately asking for?

2 MS. SCHMELTZER: We're just, we're just asking at  
3 this point for receipt of this exhibit to show that they never  
4 previously disclosed the material that comprises Exhibit E,  
5 Attachment E, nor did they claim attorney work product for it.

6 JUDGE SIPPEL: Well, I -- as I say, I -- This has  
7 been marked for identification. I'm not going to receive it  
8 into evidence because I don't see where it's going to be able  
9 to be used in findings in any way. And as I say, I'm just not  
10 going to go into this, this kind of a peripheral issue unless  
11 there's been a showing of cause, and there hasn't been a  
12 showing of cause. As far as I know, you're getting everything  
13 that you need to try this case. You ran into the problem with  
14 Covington. We're taking care of that as best as we can.  
15 You've got all kinds of things on the record that you can use  
16 in findings --

17 MS. SCHMELTZER: But --

18 JUDGE SIPPEL: -- in terms of what you're looking  
19 for, but this is --

20 MS. SCHMELTZER: Well, when you say we're getting  
21 everything we need, we've gotten it at the 11th hour or the  
22 12th hour. In terms of the back-up material for this, we've  
23 never gotten the handwritten notes of Ms. Covington. We  
24 didn't get the NBC documents until the last minute. So we  
25 haven't gotten things in sufficient time.

1 JUDGE SIPPEL: Well, you know, we're in litigation.  
2 I, I, I'm not sure -- What is it that you're asking me to do?

3 MS. SCHMELTZER: Just simply to receive this in  
4 evidence. This shows the only documents for which they  
5 claimed a privilege in response to discovery. Those are the  
6 only documents for which they claim privilege.

7 JUDGE SIPPEL: "This" being Exhibit 13?

8 MS. SCHMELTZER: Yes, right.

9 JUDGE SIPPEL: Well, as I told you, I'm not going to  
10 receive that into evidence, but I'll certainly mark it for  
11 identification and it will, it will, it will go with the file.  
12 I, I'm, I'm listening to your frustration and I'm not trying  
13 to belittle the concerns that you're raising, but the thing is  
14 is that here we -- there's only a certain number of issues  
15 that we have to deal with, that I have to deal with, and as we  
16 come up with an, with an immediate concern that I can correct,  
17 I do the best I can, as we did.

18 But I don't know -- There's nothing to do except  
19 just note this for the record. Exhibit 13 then is identified  
20 and rejected.

21 (Whereupon, the document referred to  
22 as Four Jacks Exhibit No. 13 was  
23 rejected.)

24 JUDGE SIPPEL: Now, we have Ms. Barr sitting on the  
25 stand here, waiting for your next question. Can we ask her

1 | some questions --

2 |           MS. SCHMELTZER: Right.

3 |           JUDGE SIPPEL: -- and then we'll --

4 |           MS. SCHMELTZER: Right.

5 |           JUDGE SIPPEL: -- finish up for the afternoon?

6 |           MS. SCHMELTZER: Okay.

7 |           BY MS. SCHMELTZER:

8 |           Q     All right, Ms. Barr, let me take you over to  
9 | paragraph 40 of your exhibit, SH3-18.

10 |          A     Yes.

11 |          Q     In which you say, "To augment WMAR-TV's  
12 | ascertainment process the station joined the Baltimore  
13 | Broadcasters Coalition."

14 |          A     That's correct.

15 |          Q     Okay. Do you have anything in writing which shows  
16 | when the station actually joined the Baltimore Broadcasters  
17 | Coalition?

18 |          A     I don't recall. I, I, I don't recall that I have  
19 | anything in writing. I, I do recall generally that there was  
20 | a check cut to the Baltimore Broadcasters Coalition at some  
21 | point. It may have been in the fall of 1991.

22 |          Q     So you don't know exactly when the station joined?

23 |          A     I don't, I don't recall exactly. I know it was some  
24 | time --

25 |               MR. HOWARD: That's not what she just testified to.

1 You're, you're mischaracterizing her testimony. So you don't  
2 recall when she joined. You asked whether she had a document,  
3 then you changed that around to say you don't recall when you  
4 joined. That's not what she testified. But if you want to  
5 ask her that --

6 BY MS. SCHMELTZER:

7 Q Do you recall -- So you don't have any specific  
8 recollection as to when the station joined the Baltimore  
9 Broadcasters Coalition?

10 A No, that's not what I said. I, I do recall because  
11 the first meeting that we attended was in the late fall of  
12 1991, so we joined some time prior to that. The Baltimore  
13 Broadcaster Coalition holds I believe two meetings a year and  
14 we attended the latter meeting.

15 Q And that would have been November or December of  
16 1991?

17 A That's correct.

18 MS. SCHMELTZER: Your Honor, I would move to strike  
19 that paragraph because there's no indication that they joined  
20 during the renewal period.

21 MR. HOWARD: That's her testimony.

22 JUDGE SIPPEL: Well, that's her testimony. We'll --  
23 You can, you can argue what the findings should be based on  
24 what you see the evidence and the, and the testimony to be,  
25 but I'm going to overrule that motion or deny the motion.

1 BY MS. SCHMELTZER:

2 Q In the next paragraph, Ms. Barr, you talk about  
3 Scripps Howard policy requiring a written quarterly  
4 ascertainment report. This is the community ascertainment  
5 report we spoke about earlier.

6 A Yes, it is.

7 Q Is that correct? And, and this is the report that  
8 you have no documentation for for the second quarter or the  
9 third quarter of 1991?

10 A That's correct.

11 Q So there's no evidence that this was actually sent  
12 to Scripps Howard during that period of time?

13 A Unless Scripps Howard had a copy of it.

14 Q During that period of time, May 30, 1991, to  
15 September 3, 1991, did you -- were you responsible for sending  
16 EEO reports to Scripps Howard?

17 A No, that did not fall within my scope of  
18 responsibility.

19 Q Do you know if they were sent?

20 A I, I don't -- Since it didn't fall under my area of  
21 responsibility, I have no way of knowing.

22 Q Do you -- You -- Were you responsible for sending  
23 budget reports to Scripps Howard?

24 A No, I was not.

25 Q Do you know if they were sent?

1           A     I -- Again, it did not fall under my area of  
2 responsibility.

3           MS. SCHMELTZER: I have a question, Your Honor, in  
4 Footnote 8. It's SH3-19. I have a, a reference here that you  
5 struck that footnote, but I don't have a reference that you  
6 struck the attachment. So I just need to clarify that.

7           MR. HOWARD: I don't believe it was struck.

8           MS. SCHMELTZER: This was the community leader --  
9 This relates to the Community Advisory Board that did not meet  
10 during the relevant period.

11          MR. HOWARD: It was discussed and it was not struck.

12          JUDGE SIPPEL: Are you referring to Footnote 8?

13          MS. SCHMELTZER: Well, the whole -- Paragraph 42 was  
14 struck in Ms. Barr's testimony.

15          JUDGE SIPPEL: Oh, wait a minute. I have to move on  
16 to -- I have to get copy 3A. Is that right? Exhibit 3A?

17          MS. SCHMELTZER: Um-hum.

18          JUDGE SIPPEL: Paragraph -- According to my notes,  
19 paragraph 42 was stricken.

20          MS. SCHMELTZER: Right. And the footnote I believe  
21 was -- Was the footnote stricken, Footnote 8?

22          JUDGE SIPPEL: Not, not according to the -- Not,  
23 not, not -- It's not on my, it's not on my work copy and I  
24 think it would have been if I had stricken it.

25          MS. SCHMELTZER: Well, it seems to me --

1 MR. HOWARD: It's consistent with the Bureau and,  
2 and our, and our work copies as well, Your Honor. It was not  
3 stricken.

4 MS. SCHMELTZER: It seems to be consistent with  
5 striking paragraph 42. The footnote and the attachment should  
6 be stricken as well.

7 JUDGE SIPPEL: Well, the logic sounds like it's in  
8 place. I, I don't -- Does anybody have a recollection, a  
9 specific recollection that that was addressed and I denied  
10 striking the footnote?

11 MR. HOWARD: The Community Advisory Board -- Can I  
12 have one minute, Your Honor?

13 JUDGE SIPPEL: Surely. Let's go off the record.

14 (Off the record.)

15 JUDGE SIPPEL: We're back on the record. I'm going  
16 to permit counsel to review the, the October 6th hearing and  
17 see what the specific ruling was with respect to that footnote  
18 on page 19. Do you have another question?

19 MS. SCHMELTZER: Well, not related to that. I'll  
20 just skip that part.

21 JUDGE SIPPEL: We'll come back to that tomorrow  
22 morning.

23 MS. SCHMELTZER: Yeah, right. Okay.

24 BY MS. SCHMELTZER:

25 Q Now, Ms. Barr, for the second quarter of 1991, and



1 that would be April, May and June. Is that correct?

2 A That's correct.

3 Q And, and during that period Scripps Howard was the  
4 licensee for June. Who was responsible for preparing the  
5 station's issues programs list?

6 A The issues programs list was compiled by Tonie  
7 Wright.

8 Q Okay. And am I correct that she did that on the  
9 basis of receiving program descriptions from the station's  
10 news and public affairs program producers?

11 A Each, each producer responsible for different  
12 programs would provide her with a list of programs, yes.

13 Q And then that producer would give her a list of the  
14 issues that had been met by the program?

15 A They would, they would -- Because they had produced  
16 the special report or the program itself, they would identify  
17 the issue that it had responded to, yes.

18 Q And then she typed up the actual issues programs  
19 list after she got that information?

20 A That's correct.

21 Q Did anybody else work on the list with her?

22 A I reviewed the list once she had compiled it.

23 Q After you reviewed it, did anyone else review the  
24 list?

25 A It was, as a matter of general course, sent to

1 counsel.

2 Q Did anyone else other than counsel review the list?

3 A No.

4 Q Was the list sent to Scripps Howard's corporate  
5 office?

6 A Yes.

7 Q So to your recollection, was the second quarter 1991  
8 issues and programs list sent to Scripps Howard's corporate  
9 office?

10 A In all likelihood. I, I don't recall if that  
11 particular list was sent.

12 Q Would that have been directed to Mr. Schroeder if it  
13 was sent to Scripps Howard's corporate office?

14 A As I recall, the issues programs list, along with  
15 some other reports, were actually sent directly to Dick  
16 Janssen's attention.

17 Q But you can't recall whether that -- the second  
18 quarter list was sent?

19 A No, I, I don't recall.

20 Q And did Ms. Wright type up what consists of the  
21 second quarter 1991 issues programs list all at one time?

22 A Generally, that's how she does it, yes.

23 Q And that was typed up at the end of the quarter?

24 A That's correct. Actually, at the very beginning of  
25 the following quarter.

1 Q At the beginning of the third quarter --

2 A She would type up a list from the second quarter.

3 Q So that would be before July 10 of 1991 --

4 A That's correct.

5 Q -- she typed up the whole second quarter issues  
6 programs list?

7 A That's correct.

8 Q And prior to the time that she typed up the second  
9 quarter issues programs list, there was no specific page  
10 identifying issues?

11 A The only page that existed would have been the page  
12 from the prior quarter's issues ascertainment list, which we  
13 used as kind of a framework for the following quarter. So  
14 there would have been the cover page from first quarter which  
15 would have indicated a certain number of issues, and then we  
16 would have used that to sort of get the second quarter  
17 started. That was -- would then be modified as events  
18 warranted, as issues came up during the second quarter.

19 Q But the list wasn't modified until the end of the  
20 quarter, so if the issues changed they were added to the list  
21 at the end of the quarter?

22 A Well, they couldn't -- you couldn't modify it until  
23 the end because she wouldn't necessarily know what was going  
24 to happen on June 29th, for example. So you couldn't modify  
25 it until you dealt with the issue.

1 Q Now, so for the -- Did Ms. Wright follow the same  
2 procedure in preparing the third quarter issues programs list?

3 A Yes.

4 Q And to the extent that there were changes between --  
5 And that was put in your file on or about -- Let's see, that  
6 would have been for July, August and September?

7 A That's correct.

8 Q And that was put in your file on or before  
9 October 10, 1991?

10 A That's correct.

11 Q And so for any issues that changed from the second  
12 quarter to the third quarter, the first time that was  
13 reflected was in the list that was put in the file on  
14 October -- on or before October 10th. Is that correct?

15 A The first time it was reflected in writing? Yes.

16 Q In writing, right. Now, I believe you included the  
17 lists, the two lists we've been talking about, as Attachment F  
18 to your exhibit?

19 A That's correct.

20 Q And if you would just look -- Do you have a way of  
21 kind of looking at those two sheets? Maybe not side by side,  
22 but --

23 A What, what --

24 Q -- looking at the front pages together?

25 A Okay.

1 Q Okay. Now, looking at the second quarter list and  
2 comparing it with the third quarter list, it appears that  
3 unemployment, the media, social welfare, and child abuse are  
4 not on -- they're on the second quarter list but not on the  
5 third quarter list. Do you see that?

6 A Yes.

7 Q And if you look at the third quarter list, looks  
8 like there are seven new issues, which are literacy, economic  
9 development, homelessness, redistricting, Supreme Court,  
10 cultural development, and youth concerns. Is that correct?

11 A That's correct.

12 Q And the first time that that list was put down in  
13 writing was at the end of the third quarter?

14 A Yes, that's correct.

15 Q Now, if you will also compare the second quarter and  
16 third quarter lists, both of them say at the very beginning,  
17 "The following programs, editorials, and news reports were  
18 broadcast during the period," and then it defines the period,  
19 "and are a significant representation of WMAR-TV's response to  
20 issues of community interest as determined by continuing  
21 ascertainment and surveys of the general public." You didn't  
22 actually do surveys of the general public, did you?

23 A That term has been in the, in the report for some  
24 time.

25 Q This was kind of a boilerplate term that had been in

1 the reports of the prior licensee?

2 A That's correct.

3 Q Now, if you, if you go over to the second page, that  
4 talks about -- the second quarter talks about description of  
5 typical and illustrative programs, and the second page of the  
6 third quarter talks about description of significant programs.  
7 So there's a little change in the title there.

8 A Correct.

9 Q Was that on advice of counsel --

10 A Yes, it was.

11 Q -- that change? In the second quarter, it says,  
12 "Editorials are approximately 90 seconds in length and are  
13 aired five times." What do you mean by that, are aired five  
14 times?

15 A That the same editorial is aired five times during a  
16 one-week period.

17 Q Okay.

18 A On five separate occasions.

19 Q All right. And on the third quarter, there's a --  
20 it says, "The editorials are aired four times over two days?"

21 A That's correct.

22 Q So was a determination made to drop one editorial?

23 A I recall that there was, but I do not recall  
24 specifically why.

25 Q Now, if you'll also notice on the second quarter

1 list there's a reference to "syndicated and network  
2 programming responsive to ascertaineers," but that's not on the  
3 third quarter list.

4 A That's correct.

5 Q And is that because you were advised that the  
6 syndicated and network programming was not really responsive  
7 to ascertaineers?

8 A No. Counsel had looked over our issues and programs  
9 list and had said that it was perhaps always better to be  
10 conservative in the production of these documents, that we had  
11 many programs that were responsive to community needs and that  
12 while some of the programs -- some of the subjects covered by  
13 these syndicated programs were in fact responsive, we did not  
14 need to include them in in this case since some were and some  
15 weren't. So we, we were taking a, a more conservative  
16 approach and not including the syndicated programming material  
17 in there.

18 Q Well, in, in fact, the station has no control over  
19 what comes to it in a syndicated program. Isn't that right?

20 A Well, in the sense that we certainly -- I mean, we'd  
21 make a decision to air that program and --

22 Q Right.

23 A -- and if we choose not to air a program because of  
24 the specific content, that is our decision.

25 Q But you don't know what the content of the "Montel

1 Williams Show" is going to be very far in advance, do you?

2 A We know about three weeks in advance.

3 Q And Montel Williams doesn't get a list of Baltimore  
4 issues to do their program, do they?

5 A No, but we, we'll, we will often contact the  
6 producers of these programs to discuss with them the  
7 possibility of covering certain issues that we believe are  
8 pertinent, not only to Baltimore but perhaps to other areas as  
9 well.

10 Q So I take it in the third quarter you made the  
11 determination not to include the syndicated and network  
12 programs?

13 A That's correct.

14 Q Okay. Now, do you recall hearing about the filing  
15 of the competing application in early September of 1991?

16 A Yes, I do.

17 Q Was it shortly after the competing application was  
18 filed?

19 A I believe so.

20 Q So would it -- If the competing application was  
21 filed on June 3rd, would you have heard by the 5th or 6th of  
22 September?

23 MR. HOWARD: I think she misspoke the dates.

24 THE WITNESS: Yeah, wasn't it filed in September?

25 MS. SCHMELTZER: If, if --



1 JUDGE SIPPEL: June 3rd you said.

2 BY MS. SCHMELTZER:

3 Q If the competing application was filed, I'm sorry,  
4 September 3rd, 1991, to the best of your recollection, did you  
5 hear about, about it by September 5th or 6th or 7th?

6 A As I recall, I did hear about it within several days  
7 of it being filed.

8 Q Did you take any actions at that point in time to  
9 review the issues programs list?

10 A None other than what I would normally do.

11 Q Did you ask Janet Covington to look into what had  
12 been the principal issues during the third quarter of 1991?

13 A I had my ongoing conversations with Janet Covington  
14 that I had been having as a matter of general practice, and I  
15 continued to have those same conversations.

16 Q Did you ask her to do anything for you in writing  
17 concerning the issues of importance in the third quarter of  
18 1991?

19 A No, I did not.

20 Q Did you ask her to come up with new issues that  
21 might be of importance to the Baltimore community in September  
22 1991?

23 A No, I did not.

24 Q Did you ask anyone else at the station to put  
25 together a list of what issues were important in September